Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 80-415

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Appellant,

v.

WILLIAM M. GIBBONS, Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor; CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Indenture Trustee; THE FIRST NATIONAL BANK OF CHICAGO, as Indenture Trustee; HENRY CROWN, et al.; THE UNITED STATES OF AMERICA; THE INTERSTATE COMMERCE COMMISSION; and NEIL P. GOLDSCHMIDT, Secretary of Transportation,
Appellees.

On Appeal From The United States District Court For The Northern District Of Illinois, Sitting As A Railroad Reorganization Court

SUPPLEMENT TO MOTION TO AFFIRM

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December 22, 1980

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Appellees William M. Gibbons, the Trustee of the Chicago, Rock Island and Pacific Railroad Company, Debtor, Continental Illinois National Bank and Trust Company of Chicago and The First National Bank of Chicago, as Indenture Trustees, and Henry Crown, et al., file this supplement to their Motion To Affirm the judgment of the district court in the above-captioned appeal.

This supplemental brief is filed to advise this Court of the decision of the United States Court of Appeals for the Seventh Circuit, dated December 16, 1980.[1] In that decision, the court of

[1]Although the decision was dated December 16, 1980, it did not become known to appellees until December 18, 1980, one day after they had filed their Motion to Affirm.

appeals, equally divided, affirmed the October 15, 1980 order of District Judge Frank J. McGarr which continued in effect his earlier order enjoining implementation of the labor protection scheme of the Rock Island Transition and Employee Assistance Act. See Appendix H hereto, *In re Chicago, Rock Island & Pacific Railroad Co.*, Nos. 80-2487 and 80-2536 (7th Cir. Dec. 16, 1980) (unpublished order).[2]

For the reasons stated in the Motion to Affirm filed by appellees on December 17, 1980, appellees again respectfully request that this Court note probable jurisdiction of this appeal and affirm the district court's order of June 9, 1980.

Respectfully submitted,

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December 22, 1980

[2]The court of appeals also denied the motion to dismiss filed by appellees. See Motion to Affirm 3, n. 3. For the reasons stated in appellees' Petition for a Writ of Certiorari at 8-16, *Gibbons* v. *Railway Labor Executives' Ass'n*, No. 80-704 (U.S., *petition for cert. filed* Oct. 30, 1980), appellees argued that Congressional forum-shopping should not be permitted where an appeal pends in this Court and thus that jurisdiction did not lie in the court of appeals.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604
(ARGUED *EN BANC* NOVEMBER 13, 1980)
DECEMBER 16, 1980.

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge**

In the Matter of:

CHICAGO, ROCK ISLAND and PACIFIC RAILROAD COMPANY,

Debtor,

Nos. 80-2487 and 80-2536

Appeals of:

RAILWAY LABOR EXECUTIVES' ASSOCIATION; THE UNITED STATES OF AMERICA; THE INTERSTATE COMMERCE COMMISSION; AND NEIL GOLDSCHMIDT, United States Secretary of Transportation,

Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division

No. 75 B 2697

FRANK J. MC GARR, *Judge.*

ORDER

This is an appeal from an order entered by the district court October 15, 1980, continuing in effect a preliminary injunction issued June 9, 1980; the injunction bars the Interstate Commerce Commission, the United States Secretary of Transportation, and the Trustee of the Debtor from complying with the labor

*Circuit Judges Walter J. Cummings and Wilbur F. Pell, Jr. did not participate in the *en banc* hearing.

protection requirements of Rock Island Transition and Employee Assistance Act, as amended by the Staggers Rail Act.

We heard the matter *en banc* pursuant to the Staggers Rail Act. Those circuit judges in regular active service who deem themselves disqualified did not participate. We took with the case a motion to dismiss on the ground that the issue is pending before the Supreme Court, an appeal having been taken from the injunction of June 9, 1980 before enactment of the Staggers Rail Act.

We all agree that in view of the Staggers Rail Act the motion to dismiss the appeal should be DENIED, and IT IS SO ORDERED.

On the merits, Judges Fairchild, Sprecher, and Cudahy voted to reverse the order appealed from. Judges Swygert, Bauer, and Wood voted to affirm.

The Court being equally divided, the order appealed from is necessarily AFFIRMED.

IT IS SO ORDERED.